

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Authority, Among Other Things, to Increase Rates and Charges for Electric and Gas Service Effective on January 1, 1999.

(U 39 M)

Application 97-12-020
(Filed December 12, 1997)

Investigation into the Reasonableness of Expenses Related to the Out-Of-Service Status of Pacific Gas and Electric Company's El Dorado Hydroelectric Project and the Need to Reduce Electric Rates Related To This Non-Functioning Electric Generating Facility.

Investigation 97-11-026
(Filed November 19, 1997)

Application of Pacific Gas and Electric Company for Authority, Among Other Things, to Decrease its Rates and Charges for Electric and Gas Service, and Increase Rates and Charges for Pipeline Expansion Service.

Application 94-12-005
(Filed December 9, 1994)

Order Instituting Investigation Into Rates, Charges, and Practices of Pacific Gas and Electric Company.

Investigation 95-02-015
(Filed February 22, 1995)

INTERIM OPINION ON ATTRITION RATE ADJUSTMENT FOR 2002

1. Summary

On January 17, 2002, Pacific Gas and Electric Company (PG&E) filed a motion requesting that the Commission issue an interim decision to ensure that if, at a later date, the Commission approves an attrition rate adjustment (ARA) for 2002, such adjustment may be made effective as of the date of the requested interim decision. PG&E's motion also requests that the Commission specify the process for addressing the substantive question of how much, if any, attrition relief PG&E should receive for 2002.

This decision grants PG&E's motion, as modified herein. PG&E's rates and authorized revenue requirements are not directly affected by this decision. They would only be affected if, at a later date, the Commission approves an ARA for 2002.

2. Background

Decision (D.) 00-02-046 resolved most issues in PG&E's Test Year (TY) 1999 general rate case (GRC). Among other things it ordered PG&E to file a TY 2002 GRC in accordance with the Rate Case Plan. It also authorized PG&E to file for an ARA for 2001.¹ (D.00-02-046, pp. 54-55, 470-473, and Ordering Paragraph 15.)

D.00-07-050 modified D.00-02-046 by allowing PG&E to file the TY 2002 GRC on a schedule delayed by nine months. By D.01-10-059 dated October 25, 2001, the Commission resolved a petition by PG&E to modify D.00-07-050. Among other things, D.01-10-059 ordered PG&E to file for a TY 2003 GRC and provided for concurrent comments on the need for an attrition increase for 2002.

¹ PG&E filed Application (A.) 00-07-043 on July 27, 2000. A decision is pending.

In response to D.01-10-059, comments on the need for an attrition increase were filed by PG&E and jointly by the Office of Ratepayer Advocates, The Utility Reform Network, and James Weil (collectively, Consumers). PG&E filed the instant motion on January 17, 2002 and Consumers filed a joint response in opposition to the motion on February 1, 2002. PG&E filed a reply on February 11, 2002. This decision addresses PG&E's motion while deferring action on the substantive issue of whether to approve an ARA for 2002.

3. Discussion

In D.01-10-059, we modified our plan for PG&E's next GRC by converting it from a 2002 to a 2003 TY. In so doing, we recognized that the deferral in the test year raised the question of whether PG&E should be entitled to request an ARA for 2002. We therefore asked for comments on the need for such an ARA. We intend to consider the need for a 2002 ARA after we have acted upon PG&E's pending request for a 2001 ARA.

We need to allow adequate time for full and fair consideration of whether to approve an ARA for 2002, and if so the parameters and magnitude of such an adjustment. However, even if we ultimately find that a 2002 ARA is justified, we would not be able to make any ARA retroactive unless we act in advance with respect to the effective date. In order to preserve our ability to approve an ARA that would have effect for a substantial portion of the year, we will approve PG&E's motion, as modified below. We note that in D.00-12-061, we authorized similar relief with respect to PG&E's 2001 ARA.

We will modify PG&E's request in one respect. We will make the effective date for any attrition increase ultimately granted by the Commission to be the date upon which PG&E submits its Test Year 2003 General Rate Case

Application. As discussed below, we believe this effective date is the most appropriate given the situation before us.

We emphasize that we are simply preserving our option to authorize an ARA that could be made effective today. We reserve our right to deny an ARA for 2002 after further consideration. Nothing in today's decision assures PG&E an ARA for 2002.

In its motion, PG&E also requests that we establish the process by which we will consider the substantive issue of whether and by how much to approve an ARA for 2002. As noted earlier, we have asked for and have received comments on the need for an ARA for 2002. We note that in their comments, Consumers contend that the filing of concurrent comments without opportunity for reply comments or evidentiary hearings allowed them no opportunity to test PG&E's showing. Consumers contend that if the Commission chooses to consider further the need for an ARA for 2002, it must provide for discovery and, if needed, further evidentiary hearings. By this order we will provide for replies to the comments filed pursuant to D.01-10-059. Reply comments should include a statement of any issues for which the party asserts evidentiary hearings are required. We further direct the Administrative Law Judge, in consultation with the Assigned Commissioner, to establish further procedures as necessary and appropriate. Discovery should proceed immediately. We intend to resolve this matter expeditiously once we have resolved A.00-07-043, PG&E's 2001 ARA application.

We have carefully considered Consumers' opposition to PG&E's motion and find the asserted grounds for their opposition to be lacking in many respects. Consumers first contend that because we used the term "proceeding" in the dicta of D.01-10-059 when we discussed our request for comments on the need for an

ARA for 2002, PG&E's request for interim relief is outside the scope of *this* proceeding. Consumers reason that we required a new ARA proceeding to be established and that such new proceeding is the only appropriate forum for considering the interim relief proposed by PG&E. However, we find nothing in D.01-10-059 to suggest that a new docket must be established in order to consider PG&E's substantive request for an ARA for 2002, or that such proceeding must be established before interim relief can be considered. PG&E's request is squarely within the scope of this proceeding.²

We note that if we were to require PG&E to first file a new application before we consider the question of interim relief, several weeks if not months could be added to the time when a decision on interim relief would be issued. As noted earlier, our objective in this decision is to preserve our ability to authorize an ARA for 2002 that would have effect for a significant portion of the year, should we find an ARA to be justified. More than two months of 2002 have already passed, so in any event an ARA could not have effect for the entire year. Additional delay that would result from requiring the additional procedural step of establishing a new docket is unnecessary and could potentially deny, in whole or in part, relief that we might otherwise find to be justified.

² Moreover, Ordering Paragraph 3 of D.01-10-059 authorizes comments on the need for an attrition increase without making any reference to a proceeding, and this takes precedence over the dicta cited by Consumers. The ordering paragraph is the final decision of the Commission and is not subject to modification by prior statements contained in the opinion. (*City of Healdsburg v. Pacific Gas and Electric Company* (1989) 31 CPUC2d 465, 475.)

Consumers' other arguments go to the merits of PG&E's case for an ARA, not the company's request for an interim decision that fixes the earliest effective date of any ARA that may be authorized.

However, we do find certain arguments raised by the Office of Ratepayer Advocates (ORA) compelling. In particular, ORA states:

"...PG&E should not be rewarded with an attrition increase because of a delay of its own making. As noted above, it was PG&E that requested a delay in the filing of its 2002 GRC. When the Commission granted PG&E's request and opted instead for a TY 2003, it requested comments on the need for a 2002 attrition adjustment out of an apparent concern that it was extending the rate case cycle from three to four years. (D.01-10-059, Slip Opinion, p. 4.) However, the need for 2003 GRC was the direct result of PG&E's election to delay the filing of its TY 2002 NOI. If PG&E wanted a rate increase in 2002 it should have pursued the 2002 NOI. Having voluntarily delayed a complete review of its cost structure, it shouldn't now be rewarded with an attrition increase." (ORA Comments on Proposed Decision of ALJ Wetzell, page 3.)

In addition, ORA noted that:

"... retroactive attrition increases are a poor policy choice. As noted above, the Commission just granted PG&E a \$151 million attrition increase retroactive to January 1, 2001. Authorizing the ratemaking mechanism requested by PG&E and allowing it to pursue a 2002 attrition increase during 2002 would result in a continuation of the previously unprecedented practice of retroactive attrition adjustments. There are no ratepayer benefits in granting retroactive attrition adjustments. Utility managers will budget to a revenue requirement which has been authorized, not a revenue requirement that may or may not be granted at some indefinite date in the future. Rather than providing the utility with an incentive to properly maintain and operate its system while meeting the demands of customer growth through infrastructure investments, it is more likely that

retroactive attrition increases will simply go into the pockets of shareholders. The Commission cancelled the TY 2002 GRC because there was no way it could issue a decision in time to have new rates in place by January 1, 2002 (D. 01-10-059, Slip Opinion, p. 3.) The same logic dictates that the Commission should also reject any 2002 attrition adjustment. The appropriate time for implementing any 2002 attrition adjustment has already passed.” (Id. at page 5.)

We concur with ORA on these points. Granting PG&E’s request for a retroactive attrition increase does not result in appropriate incentives, neither for PG&E’s management to contain its own costs, nor to management to submit its general rate case application in a timely manner. To mitigate the poor incentives resulting from a retroactive attrition increase, we will modify PG&E’s request and make the effective date of any attrition increase ultimately granted by the Commission the date upon which PG&E submits its Test Year 2003 General Rate Case Application. This will make the effective date of any increase much closer in time to the date PG&E’s management is aware of the increase. It will also provide PG&E with an incentive to expedite the submittal of its next general rate case application.

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4/4/02
Agenda
ID #385

4/4/02
8:30 a.m.

4. Comments on Alternate Decision

The proposed alternate decision of Commissioner Lynch was mailed to parties on March 21, 2002. Pursuant to Rule 77.7(f)(9), we reduced the 14-day comment period to 12 days due to public necessity. Comments were due on April 2, 2002, and no reply comments were allowed. No modifications were made based on comments.

Findings of Fact

1. The current GRC cycle for PG&E has been extended from three to four years due to delays requested by PG&E.

2. Additional time is required to determine whether, and if so by what magnitude, PG&E should be granted an ARA for 2002.

3. An Interim Order is needed so that attrition relief, if granted, may be made effective on the effective date of this decision.

Conclusions of Law

1. PG&E's motion should be granted, as modified herein.

2. An Interim Order should be issued to allow any decision that authorizes an ARA for 2002 to be effective as of the date PG&E submits its Test Year 2003 General Rate Case Application.

3. Parties should be permitted to file replies to the comments on the need for attrition that were filed pursuant to D.01-10-059.

4. This interim order does not represent a determination by the Commission that an ARA for 2002 is justified or necessary.

INTERIM ORDER

IT IS ORDERED that:

1. The *Motion of Pacific Gas & Electric Company [(PG&E)] for Interim Decision Regarding 2002 Attrition* is granted as set forth below.

2. In the event that the Commission authorizes an Attrition Rate Adjustment for PG&E for 2002, such authorization may be made effective as of the date PG&E submits its Test Year 2003 General Rate Case Application.

3. Within 15 days of the effective date of this Interim Order, and in accordance with the foregoing discussion, parties may file replies to the comments on the need for an Attrition Rate Adjustment that were filed pursuant to Decision (D.) 01-10-059. The Administrative Law Judge, in consultation with

the Assigned Commissioner, D.01-10-059 shall establish further procedures as necessary and appropriate.

This order is effective today.

Dated _____, at San Francisco, California.